

**SEMINOLE COUNTY GOVERNMENT  
AGENDA MEMORANDUM**

**SUBJECT:** Appeal of the Board of Adjustment decision to approve a side street setback variance from 25 feet to 15 feet for a privacy fence

**DEPARTMENT:** Planning and Development      **DIVISION:** Planning

**AUTHORIZED BY:** Dori DeBord

**CONTACT:** Kathy Fall

**EXT:** 7389

**MOTION/RECOMMENDATION:**

1. Reverse the Board of Adjustment decision to approve a side street setback variance from 25 feet to 15 feet for a privacy fence;
2. Uphold the Board of Adjustment decision to approve a side street setback variance from 25 feet to 15 feet for a privacy fence; or
3. Continue the request to a time and date certain.

District 1 Bob Dallari

Kathy Fall

**BACKGROUND:**

The applicant requested a side street setback variance from 25 feet to 0 feet for an existing fence that was constructed without an approved permit, along the portion of the corner lot property abutting Lake Hayes Road. At their June 23, 2008, regular meeting, the Board of Adjustment approved a side street setback variance for the fence from 25 feet to 15 feet, which was the recommendation of Seminole County Traffic Engineering. On July 8, 2008 applicant appealed the decision to the Board of County Commissioners.

**STAFF RECOMMENDATION:**

Staff recommends the Board of County Commissioners uphold the decision of the Board of Adjustment to approve a side street setback variance from 25 feet to 15 feet for a privacy fence.

**ATTACHMENTS:**

1. Notice of Appeal to BCC
2. BOA staff report
3. Reduced Copy of Site Plan
4. Maps and Aerials
5. BOA application
6. Traffic Engineering Review
7. Property Appraiser Data
8. BOA Meeting Minutes
9. Public Correspondence

**Additionally Reviewed By:**

☐ County Attorney Review ( Melissa Clarke )

Orlando Hernandez  
3391 Pemberton St.  
Oviedo, Fl. 32765  
407-366-7141  
RE: DISPUTE Decision

08 JULY 2008

County Board of Commissioners  
Planning and Development Dept.  
1101 E. First St.  
Sanford, Fl. 32771-1468  
407-665-7433

Dear County Commissioner,

On June 23, 2008, the Board of Directors was unable to approve my request of "O" feet setback fence on my property line located on Lake Haynes Road.

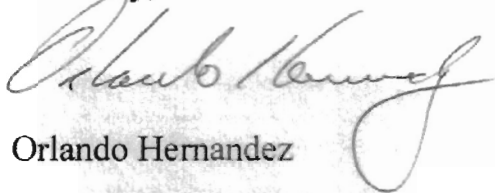
Their decision was based on someone last minute E-mail received by Karen stating, that someone said there was a "SAFETY ISSUE", on that corner.

Up to date I have not been officially inform of what the "SAFETY ISSUE" is!! Nor have I been informed of what CODE or Violations would be created by installing the fence on my "O" line or why the neighborhood can and I can not.

So there for, the Board of Directors could not have made a proper call and they approved me the 15 feet setback. The 15 feet set back will mean that I will lose 1500 sq. ft. of my property where my house living area is only 1250 sq. ft. and is not acceptable under your safety issue with no explanation.

This letter is to dispute Board Decision and re-submit my application as soon as I have been properly informed in writing about such Safety Issue or violation. The only Safety issue is my family. We need to stop burglars from re-entering my home.

Sincerely,



Orlando Hernandez

Cc: Campione Leslie, PA.

**SEMINOLE COUNTY GOVERNMENT  
BOARD OF ADJUSTMENT  
AGENDA MEMORANDUM**

**SUBJECT:** 2391 Pemberton Street – Juan Hernandez, applicant; Request for a side street setback variance from 25 feet to 0 feet for a privacy fence in R-1AA (Single Family Dwelling) district.

**DEPARTMENT:** Planning & Development **DIVISION:** Planning

**AUTHORIZED BY:** Kathy Fall **CONTACT:** Kathy Fall **EXT.** 7433

**Agenda Date** 6/23/08 **Regular** ☒ **Consent** ☐ **Public Hearing – 6:00** ☒

**MOTION/RECOMMENDATION:**

1. **Deny** the request for a side street setback variance from 25 feet to 0 feet for a privacy fence in R-1AA (Single Family Dwelling) district; or
2. **Approve** the request for a side street setback variance from 25 feet to 0 feet for a privacy fence in R-1AA (Single Family Dwelling) district; or
3. **Continue** the request to a time and date certain.

<b>GENERAL INFORMATION</b>	Applicant: Juan Hernandez Location: 2391 Pemberton Street Zoning: R-1AA Subdivision: Kew Gardens
<b>BACKGROUND / REQUEST</b>	<ul style="list-style-type: none"> <li>• The applicant proposes to place a privacy fence on their property line abutting Lake Hayes Road therefore entirely into the 25 foot side street setback.</li> <li>• There are currently no code enforcement or building violations for this property.</li> <li>• There is no record of prior variances for this property.</li> </ul>
<b>STAFF FINDINGS</b>	The applicant has not satisfied the criteria for the grant of a variance. Staff has determined that: <ul style="list-style-type: none"> <li>• No special conditions or circumstances exist, which are peculiar to the land, structure, or building involved and which are not applicable to other lands,</li> </ul>

Reviewed by:

Co Atty: KFT

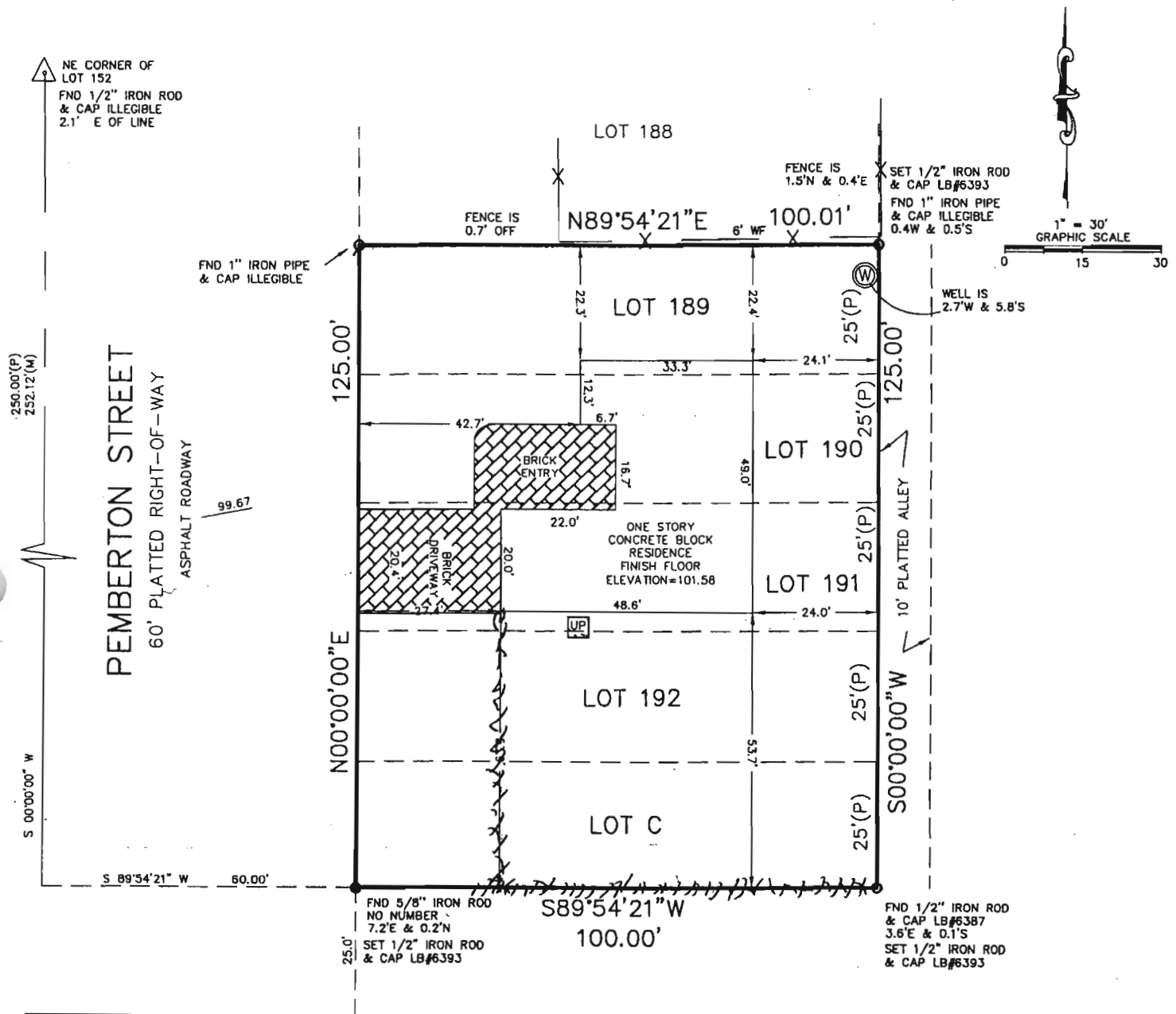
Pln Mgr: \_\_\_\_\_

	<p>structures or building in the same zoning district.</p> <ul style="list-style-type: none"><li>• Special conditions and circumstances result from the actions of the applicant.</li><li>• The granting of the variance requested would confer on the applicant special privileges that are denied by Chapter 30 to other lands, buildings, or structures in the same zoning district.</li><li>• The literal interpretation of the provisions of Chapter 30 would not deprive the applicant of rights commonly enjoyed by other properties in the same zoning classification.</li><li>• The variance requested is not the minimum variance that will make possible reasonable use of the land, building or structure.</li><li>• The applicant would still retain reasonable use of the land, building or structure without the granting of the variance.</li><li>• The grant of the variance would not be in harmony with the general intent of Chapter 30.</li></ul>
<b>STAFF RECOMMENDATION</b>	<p>Based on the stated findings, staff recommends denial of the request, unless the applicants can demonstrate that all six criteria under the Land Development Code for granting a variance have been satisfied. If the Board should decide to grant a variance, staff recommends the following conditions of approval:</p> <ul style="list-style-type: none"><li>• Any variance granted shall apply only to the privacy fence as depicted on the attached site plan; and</li><li>• Any additional condition(s) deemed appropriate by the Board, based on information presented at the public hearing.</li></ul>



DESCRIPTION: (AS FURNISHED)  
LOT C, AND LOTS 189-192, KEW GARDENS,

NE CORNER OF  
LOT 152  
FND 1/2" IRON ROD  
& CAP ILLEGIBLE  
2.1' E OF LINE




JUAN O. HERNANDEZ AND VERONICA HERNANDEZ  
FIRST COMMERCIAL BANK  
CHASE HOME FINANCE  
COBBLESTONE TITLE  
THE TALON GROUP

PROPERTY ADDRESS:  
PEMBERTON STREET  
ORLANDO, FLORIDA 32824

1. ALL DIRECTIONS AND DISTANCES HAVE BEEN FIELD VERIFIED AND ANY INCONSISTENCIES HAVE BEEN NOTED ON THE SURVEY, IF ANY.

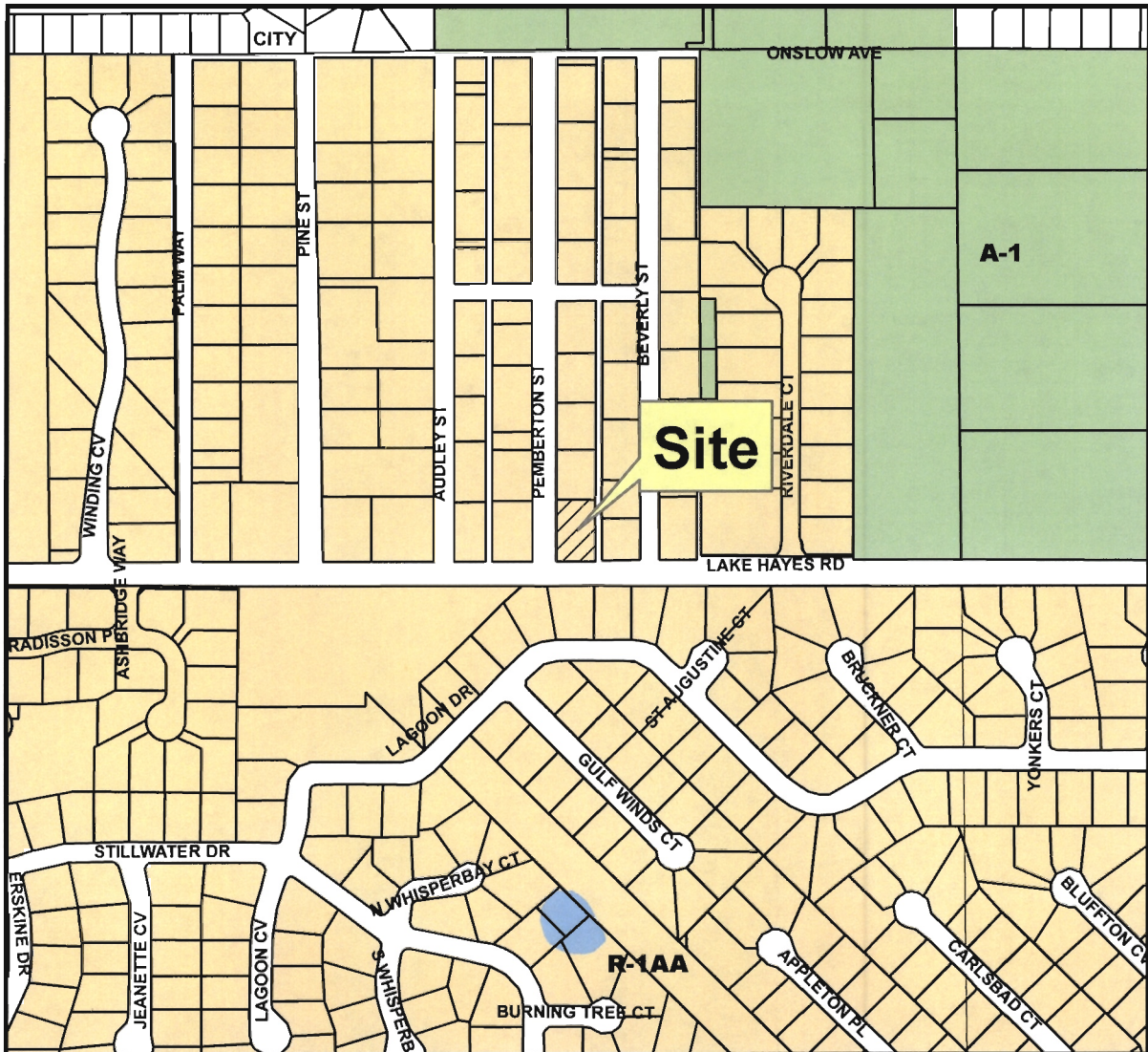
3. THE SURVEYOR HAS NOT ABSTRACTED THE  
LAND SHOWN HEREON FOR EASEMENTS, RIGHT  
OF WAY, RESTRICTIONS OF RECORD WHICH MAY

\_\_\_\_\_ BUILDING SETBACK LINE  
 \_\_\_\_\_ CENTERLINE  
 \_\_\_\_\_ RIGHT OF WAY LINE  
 131.24' EXISTING ELEVATION

A/C AIR CONDITIONER  
 CONCRETE  
 C CHORD LENGTH  
 C.B. CHORD BEARING  
 CBW CONCRETE BLOCK WALL  
 CNA CORNER NOT ACCESSIBLE




$\Delta$	DENOTES DELTA ANGLE
(P)	PER PLAT
PC	DENOTES POINT OF CURVATURE
PCC	POINT OF COMPOUND CURVE
PCP	PERMANENT CONTROL POINT
PI	DENOTES POINT OF INTERSECTION
PK	PARKER KALON

Juan Hernandez  
2391 Pemberton Street  
Oviedo, Florida 32765



Seminole County Board of Adjustment  
June 23, 2008  
Case: BV2008-49 (Map 3213, Grid B4)  
Parcel No: 27-21-31-501-0000-1890

**Zoning**

-  BV2008-49
-  A-1
-  R-1AA



## Johnson, Patricia

---

**From:** Fall, Kathy  
**Sent:** Monday, June 23, 2008 1:59 PM  
**To:** Johnson, Patricia  
**Subject:** FW: 2391 Pemberton St  
**Attachments:** DCP\_2941.JPG; DCP\_2942.JPG; DCP\_2938.JPG; DCP\_2939.JPG; DCP\_2940.JPG

Patty,

Please print this email and pictures for the BOA members for tonight's meeting. Thank you

---

**From:** Haeffner, Marcia  
**Sent:** Monday, June 23, 2008 1:08 PM  
**To:** Fall, Kathy  
**Cc:** Bevis, Mark; Blinn, Michael  
**Subject:** 2391 Pemberton St

Kathy,

I have attached some photos we took during our review at the above referenced location. The first photo shows a meter of some kind behind the fence. The panel that is missing from the fence is located on the other side of the yard. The third photo shows the sight distance while in the truck sitting at the stop sign. It appears the fence was constructed right at the property line as it is right up against a utility pole and close to a fire hydrant. The measurement from the edge of pavement to the fence is approximately eleven (11) feet.

In conclusion, Traffic is unable to approve a set-back of less than 15' and I would recommend the fence be moved back to that location.

Thanks, Marcia

Marcia Haeffner  
Traffic Studies/MOT Coordinator  
Seminole County Traffic Engineering  
140 Bush Loop  
Sanford, FL 32773

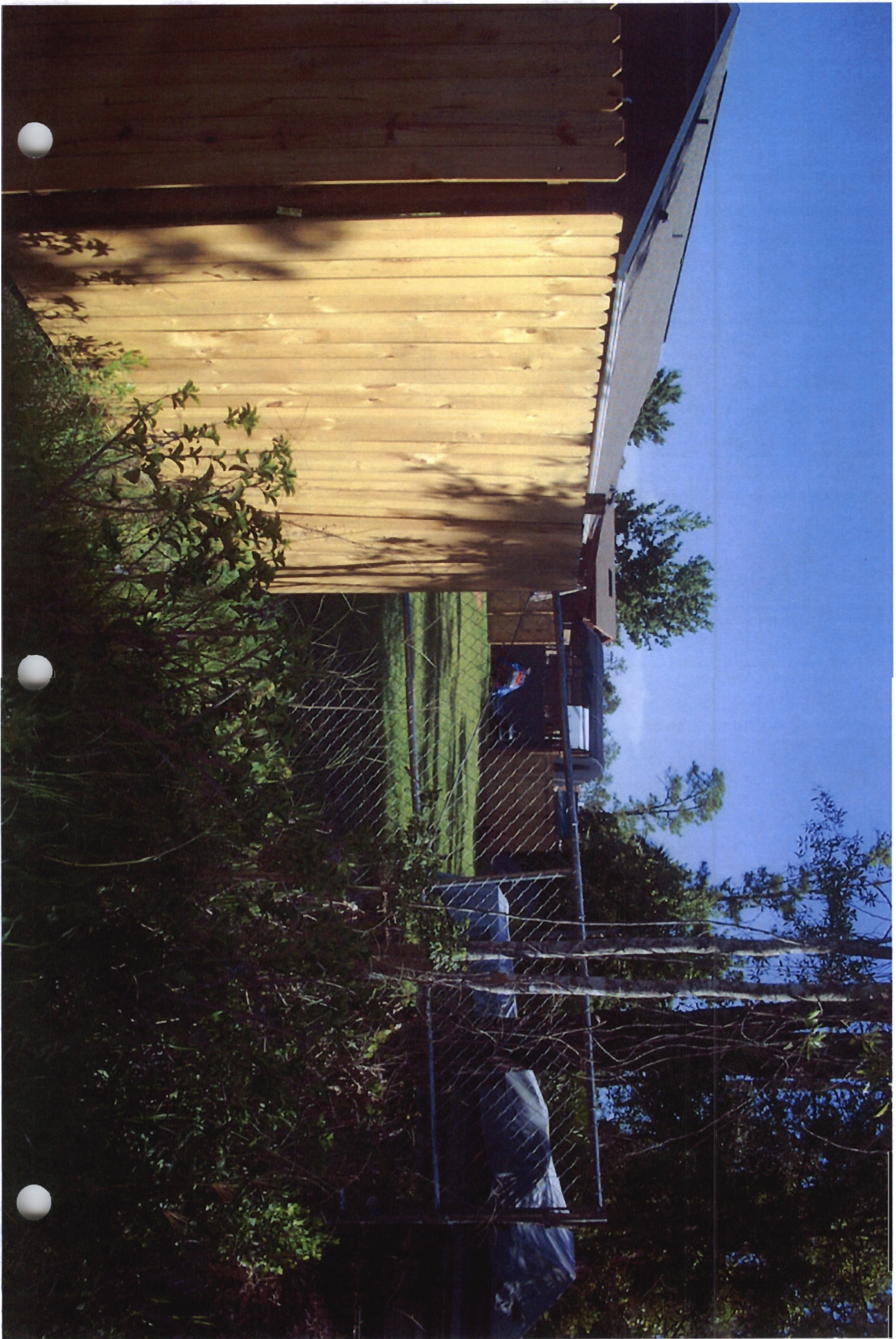
Phone: 407-665-5682  
FAX: 407-665-5623  
Email: mhaeffner@seminolecountyfl.gov

6/23/2008























Fee: \$150.00 plus \$50.00 for each additional variance

Application # BV2008-49  
Meeting Date 6-23-08

**COPY**



**VARIANCE APPLICATION**  
**SEMINOLE COUNTY PLANNING DIVISION**  
1101 East First Street Sanford FL 32771 (407) 665-7444

PROPERTY OWNER / APPLICANT (If you are not the owner please provide a letter of authorization from the owner)

Name: JUAN HERNANDEZ  
Address: 2391 PEMBERTON ST. City: Oviedo Zip code: 32765  
Project Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip code: \_\_\_\_\_  
Contact number(s): (321) 217-0239  
Email address: \_\_\_\_\_

Is the property available for inspection without an appointment? ☒ Yes ☐ No

**What type of structure is this request for?**

<input type="checkbox"/> Shed	Please describe:
<input type="checkbox"/> Pool	Please describe:
<input type="checkbox"/> Pool screen enclosure	Please describe:
<input type="checkbox"/> Addition	Please describe:
<input type="checkbox"/> New Single Family Home	Please describe:
<input checked="" type="checkbox"/> Other	Please describe: <u>fence 6x8 privacy fence</u>
<input type="checkbox"/> This request is for a structure that has already been built.	

Permit # 08-4290

6 ft.

**What type of variance is this request?**

<input type="checkbox"/> Minimum lot size	Required lot size:		Actual lot size:	
<input type="checkbox"/> Width at the building line	Required lot width:		Actual lot width:	
<input type="checkbox"/> Front yard setback	Required setback:		Proposed setback:	
<input type="checkbox"/> Rear yard setback	Required setback:		Proposed setback:	
<input type="checkbox"/> Side yard setback	Required setback:		Proposed setback:	
<input checked="" type="checkbox"/> Side street setback	Required setback:	<u>25 ft.</u>	Proposed setback:	<u>0 ft.</u>
<input type="checkbox"/> Fence height	Required height:		Proposed height:	
<input type="checkbox"/> Building height	Required height:		Proposed height:	

Use below for additional yard setback variance requests:

<input type="checkbox"/> _____ yard setback	Required setback:		Proposed setback:	
<input type="checkbox"/> _____ yard setback	Required setback:		Proposed setback:	

☒ Total number of variances requested 1

NO APPLICATION WILL BE ACCEPTED AND/OR SCHEDULED UNLESS ALL OF THE INFORMATION IN THE VARIANCE APPLICATION AND SUBMITTAL CHECKLIST ARE PROVIDED TO THE PLANNING DIVISION.

Signed: \_\_\_\_\_

L:\pl\project\boat\new applications 2006\Application Variance NEW 2006.doc

**FOR OFFICE USE ONLY**

Date Submitted: 4-23-08 Reviewed By: P. Johnson  
Tax parcel number: 27-21-31-501-0000-1890 Zoning/FLU R-1AA/LOR  
☐ Legally created parcel (1971 tax roll, 5-acre dev, lot split)  
☐ Platted Lot (check easements as shown on lots, in notes or in dedication)  
☐ Lot size \_\_\_\_\_ ☐ Meets minimum size and width  
☐ Application and checklist complete  
Notes: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SEMINOLE COUNTY  
APPLICATION & AFFIDAVIT**

**Ownership Disclosure Form**

Please provide the information as requested below in accordance with Ordinance No. 07-\_\_\_\_\_:

1. List all natural persons who have an ownership interest in the property, which is the subject matter of this petition, by name and address.

Name: James O. Keesom  
Address: 2381 Leeper St  
Phone #: 321-217-0239

Name: Veronica Keesom  
Address: 2381 Leeper St  
Phone #: 321-217-0239

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone #: \_\_\_\_\_

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone #: \_\_\_\_\_

(Use additional sheets for more space.)

2. For each corporate owner, list the name, address, and title of each officer of the corporation, the name and address of each director of the corporation, and the name and address of each shareholder who owns 2% or more of the stock of the corporation. Shareholders need not be disclosed as to corporations whose shares of stock are traded publicly on any national or regional stock exchange.

Name of Corporation: \_\_\_\_\_  
Officers: \_\_\_\_\_  
Address: \_\_\_\_\_  
Directors: \_\_\_\_\_  
Address: \_\_\_\_\_  
Shareholders: \_\_\_\_\_  
Address: \_\_\_\_\_

Name of Corporation: \_\_\_\_\_  
Officers: \_\_\_\_\_  
Address: \_\_\_\_\_  
Directors: \_\_\_\_\_  
Address: \_\_\_\_\_  
Shareholders: \_\_\_\_\_  
Address: \_\_\_\_\_

(Use additional sheets for more space.)

3. In the case of a trust, list the name and address of each trustee and the name and address of the beneficiaries of the trust.

Name of Trust: \_\_\_\_\_  
Trustees: \_\_\_\_\_  
Address: \_\_\_\_\_

Beneficiaries: \_\_\_\_\_  
Address: \_\_\_\_\_

(Use additional sheets for more space.)

**SEMINOLE COUNTY  
APPLICATION AND AFFIDAVIT**

For partnerships, including limited partnerships, list the name and address of each principal in the partnership, including general or limited partners.

Name of Partnership: Juan O. Hernandez

Principal: \_\_\_\_\_

Address: \_\_\_\_\_

Name of Partnership: Vicente Hernandez

Principal: \_\_\_\_\_

Address: \_\_\_\_\_

(Use additional sheets for more space.)

5. In the circumstances of a contract for purchase, list the name of each contract vendee, with their names and addresses, the same as required for corporations, trust, or partnerships. In addition, the date of the contract for purchase shall be specified along with any contingency clause relating to the outcome of the consideration of this petition.

Contract Vendee:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contract Vendee:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

(Use additional sheets for more space.)

6. As to any type of owner referred to above, a change of ownership occurring subsequent to this application, shall be disclosed in writing to the Planning and Development Director prior to the date of the public hearing on the application.

7. I affirm that the above representations are true and are based upon my personal knowledge and belief after all reasonable inquiry. I understand that any failure to make mandated disclosures is grounds for the subject rezone, future land use amendment, special exception, or variance involved with this Application to become void. I certify that I am legally authorized to execute this Application and Affidavit and to bind the Applicant to the disclosures herein.

Date

4-23-08

Owner, Agent, Applicant Signature

Juan O. Hernandez

STATE OF FLORIDA

COUNTY OF Seminole

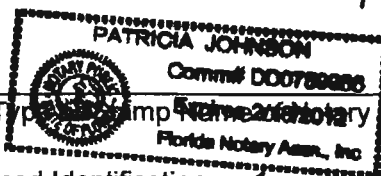
Sworn to (or affirmed) and subscribed before me this 23<sup>rd</sup> day of April, 2008 by \_\_\_\_\_

Juan Hernandez

Patricia Johnson

Signature of Notary Public

Print, Type and Stamp Name of Notary Public



Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced H 1655-434-68-066-0

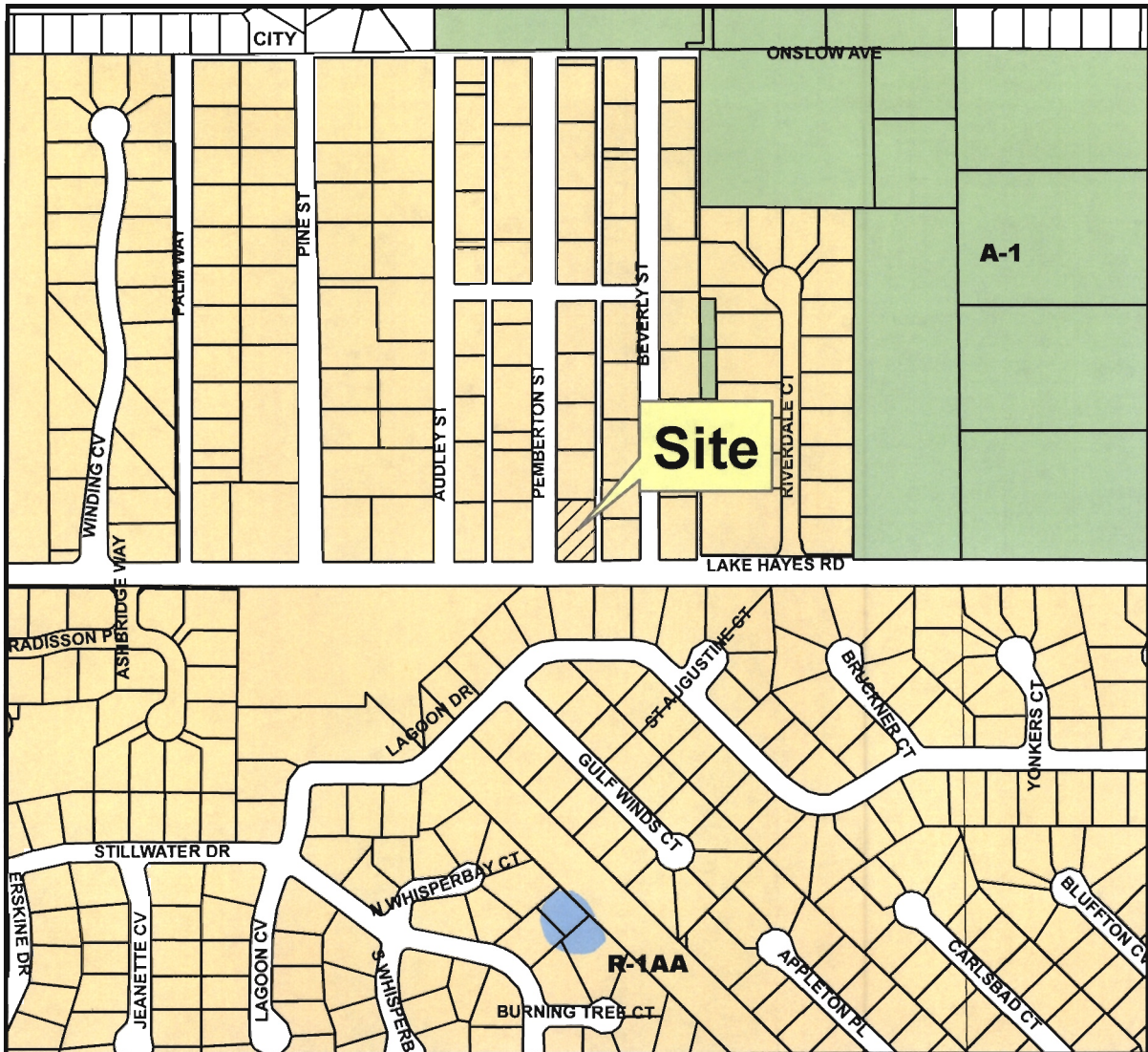
**For Use by Planning & Development Staff**

Date: \_\_\_\_\_

Application Number: \_\_\_\_\_




Form #  
Date

Juan Hernandez  
2391 Pemberton Street  
Oviedo, Florida 32765



Seminole County Board of Adjustment  
June 23, 2008  
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**Zoning**

-  BV2008-49
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Traffic Studies/MOT Coordinator  
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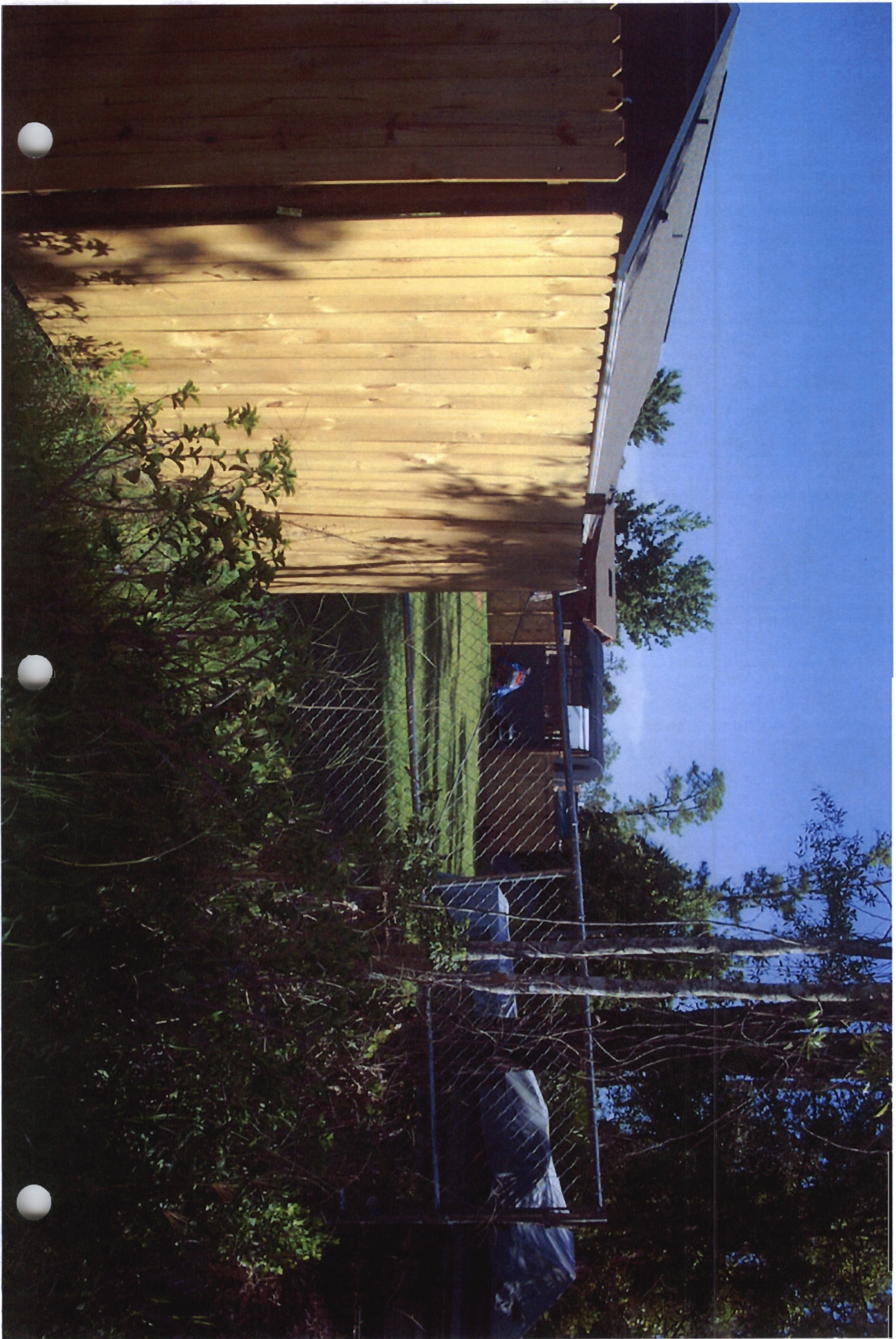
Phone: 407-665-5682  
FAX: 407-665-5623  
Email: mhaeffner@seminolecountyfl.gov

6/23/2008























http://www.scpafl.org/web/re web.seminole county title?parcel=27213150100001890&c... 4/23/2008

**MINUTES FOR THE SEMINOLE COUNTY BOARD OF  
ADJUSTMENT JUNE 23, 2008 MEETING  
ITEM# 7**

**2391 Pemberton Street** – Juan Hernandez, applicant; Request for a side street setback variance from 25 feet to 0 feet for a privacy fence in R-1AA (Single Family Dwelling) district; Located on the north east corner of the intersection of Pemberton Street and Lake Hayes Road; (BV2008-49). (District 1)

Kathy Fall, Principal Planner

Kathy Fall introduced the location of the property and stated Staff received a phone call on Friday, from a concerned neighbor stating the fence is already installed, therefore the applicant is requesting a variance for an existing fence. She further stated the applicant did apply for a permit for the fence but the permit was rejected. She then stated Staff received two E-Mails of opposition for the request. She also stated after receiving the phone call on Friday about the existing fence she called Traffic Engineering and asked if they would go out to see if there was any line of site or safety issues. She further referred to the E-Mail reply from Traffic Engineering stating they were unable to approve a setback of less than 15 feet and they would recommend the fence be moved back to the 15 feet location. She then stated the Land Development Code allows Traffic Engineering the ability to approve fence side street setbacks from 25 feet to 15 feet.

Juan Hernandez stated the reason he put up the fence was because his house had been burglarized a couple of months ago. He further stated he had two kids and needed to put his dog in the yard for safety reasons. He then stated as far as obstructing the view he had clearer pictures from the stop sign showing a clear view all the way down the street. He also showed the Board of Adjustment pictures of his property from the side, back and from the stop sign. He further stated he attached his fence to his next door neighbor's fence. He then stated there was over 55 feet in the front to the street after the fence. He also stated if he had not gotten broken into he would not have put up the fence because he really liked his property wide open. He lastly stated there had been several burglaries in the area and the fence was a must.

Bill Hyde stated he would like to concur with Staff recommendation to deny the request because it did not meet the criteria for granting a variance. He further stated there was no fence along the back of the property which hardly serves the purpose of being a privacy fence. He then stated these types of fences are not safe as far as he was concerned and that one of his neighbors had one and during the hurricane season it blew all over the place. He lastly stated the proposed type of fence were not substantial during high winds.

Juan Hernandez stated the reason he didn't have a privacy fence in the rear there was no way to get access because of the palms and bushes back there. He further stated his dog could not get through the rear. He then stated that he would pull a permit and put the privacy fence behind his house if that was his neighbor's concern. He lastly stated he really didn't like the fence but he needed security.

**Mr. O'Daniel made a motion to approve the request from 25 feet to 15 feet according to Traffic Engineering's recommendation.**

**Mr. Coover seconded the motion.**

**The motion passed by unanimous consent (5-0).**

Item # 7 BV2008-49

DARRYL W. VALENTINE  
337 Riunite Cir  
Winter Spgs  
FL 32708

6-23-2008

Att Patty. Seminole County Planning Division  
Privacy Fence (BV2008-49)

In Reference to this hearing @ 6.p.m.  
I would like the matter of the Rear  
fence added to this meeting.

Mr. Hernandez has passed the easement  
with his boat and vehicle pushed back  
on our land.

The side fence on Lake Hayes Rd. is  
extend about 6 ft pass his boundaries

Please look into this matter before  
his fence is finished.

Thank you  
Carol & Darryl Valentine

Fall, Kathy

---

**From:** ritz034 [ritz034@hotmail.com]  
**Sent:** Friday, June 20, 2008 3:49 PM  
**To:** Fall, Kathy  
**Subject:** 2391 Pemperton Variance

Kathy,

I am emailing you with my concern of the property on the corner of Pemberton St and Lake Hayes Rd, 2391 Pemberton St. I see that they are applying for a variance for a side setback to allow them to keep their fence that is already installed on the property line along Lake Hayes Road. I would like to oppose this variance to be allowed on the basis that when a car is stopped at the stop sign on Pemberton, they do not have proper clear line-of-sight of oncoming traffic on Lake Hayes from the East side. Currently, with the fence in place where they are asking the variance to allow it to be set, I cannot see any approaching car coming down Lake Hayes Road without having to pass into Lake Hayes Road. Saying this, I have seen traffic accidents along Lake Hayes because of sight obstruction in the past, also due to the failure of many drivers to abide to the posted speed limit sign.

For this reason, I wish to oppose the variance to be allowed for the side setback on 2391 Pemberton Street.

Thank You,

Naseem Ghandour



**William Hyde**  
2379 Audley ST  
Oviedo FL 32765  
407.365.5420 wb4dah@arrl.net

6/16/08

Karen Mathews  
Seminole County Planning Division  
1101 E. 1<sup>st</sup> St Room 2201  
Sanford, FL 32771

Ms. Mathews;

Please consider this letter as objecting to the variance application BV2008-49 (2391 Pemberton Street).

Such tall, solid fences degrade the entire personality of a neighborhood, and are essentially "spite" fences. There has never been a need for such fences in the Lake Hayes Road area before, and I can see none now. Without constant maintenance they quickly deteriorate and become unsightly. Making it worse, they are susceptible to strong winds and break apart during storms, become flying sheets of wood.

The property owner has already erected a solid fence along Lake Hayes Road. As you can see by the photographs attached, this existing fence not only blocks the view of the neighborhood, but has also been used to at least partially conceal unlicensed vehicles. Further, the property owner is currently using the empty lot behind the house (there is no fence along the back property line, why not?) to store a boat and a utility trailer. This is a very bad sign.

I hope that the members of the board will see that allowing this spite fence to be expanded will degrade our neighborhood, and reject the application entirely.

Respectfully submitted,

William Hyde (via email)

Attached: 2 photos









